

## REMARKS

Claims 1-3 and 5-23 are pending in the application. Claims 1, 7, 15, and 20 are independent. These changes are believed to introduce no new matter and their entry is respectfully requested.

As a preliminary matter, Applicant respectfully request clarification as to the rejections of certain claims. For example, in paragraph 4 of the Office Action, the Examiner rejected claims 1-6 under 35 U.S.C. §102(e) as anticipated by U.S. Patent No. 6,111,673 to Chang (hereinafter "Chang"). However, claim 4 was canceled in a previous Amendment.

In paragraph 6, the Examiner rejected claims 7, 11, 13, 15, and 17-21 under 35 U.S.C. §103(a) as being unpatentable over U.S. Ghani "Lambda-Labeling: A framework for IP-Over-WDM Using MPLS (hereinafter "Ghani"). On page 5 of the Office Action, the Examiner then rejects claims 15 and 17-19 under 35 U.S.C. §102(b) as anticipated by Ghani, but the arguments are arguments that go to obviousness under 35 U.S.C. §103(a). Applicant will address rejection of claims 15, and 17-21 under 35 U.S.C. §103(a) because no bases were presented for rejection of claims 15, and 17-21 under 35 U.S.C. §102(b).

### Rejection of Claims 1-6 Under 35 U.S.C. §102(e)

The Examiner rejected claims 1-6 under 35 U.S.C. §102(e) as anticipated by U.S. Patent No. 6,111,673 to Chang (hereinafter "Chang"). A claim is anticipated only if each and every element of the claim is found in a reference. (M.P.E.P. § 2131 *citing Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628 (Fed. Cir. 1987)). The identical invention must be shown in as complete detail as is contained in the claim. *Id. citing Richardson v. Suzuki Motor Co.*, 868 F.2d 1226,1236 (Fed. Cir. 1989)). Applicant respectfully traverses the rejection.

Claim 1 recites in pertinent part "assigning a set of switching wavelengths to traffic in the network; optically switching traffic that is able to be switched using switching wavelengths between nodes using the set of switching wavelengths; assigning a set of routing

wavelengths to traffic that cannot be switched using switching wavelengths; and routing the traffic that cannot be switched using the routing wavelengths.” Applicant’s Specification defines *switching wavelengths* as “labels to indicate that the traffic is to be switched in the optical domain using the optical circuit switching” and *routing wavelengths* as “labels to indicate that traffic is to be routed (page 7, lines 11-15). The Applicant’s Specification also defines *routed traffic* as “typically undergo[ing] an *optical to electrical conversion*, software processing, *and conversion back to the electrical domain from the optical domain*. (Page 7, lines 1-5.) As an Applicant can be his or her own lexicographer and any special meaning assigned to a term must be sufficiently clear in the Specification (and not necessarily in the claims themselves) MPEP §2111.01, Applicant respectfully submits that the Examiner is misapplying Chang to claim 1.

For instance, at column 4, lines 6-9, Chang specifically teaches that “while each plug-and-play module (a component of the present inventive system) senses the optical tag, the actual packet does not undergo optical-to-electrical conversion until it comes out of the network.” Chang teaches further at Column 10, lines 9-11 that “there is *no optical-to-electrical, nor electrical-to-optical conversion* of data payload 211 at network elements 121-125.” Applicant therefore respectfully submits that Chang fails to show the identical invention in as complete detail as required by M.P.E.P. § 2131 because fails to teach at least assigning a set of routing wavelengths to traffic that cannot be switched using switching wavelengths as recited in claim 1. Chang therefore does not anticipate claim 1. Applicant respectfully submits that claims 2-3 and 5-6 properly depend from claim 1 and thus are patentable over Chang as well. (M.P.E.P. §2143.03.)

Rejection of Claims 7, 11, 13, 15, and 17-21 Under 35 U.S.C. §103(a)

The Examiner rejected claims 7, 11, 13, 15, and 17-21 under 35 U.S.C. §103(a) as anticipated by U.S. Ghani “Lambda-Labeling: A framework for IP-Over-WDM Using MPLS (hereinafter “Ghani”). To establish a *prima facie* case of obviousness, an Examiner must show that the references teach or suggest each and every element of the claimed invention. (MPEP §2143.) The Examiner bears the initial burden of factually supporting any *prima*

*facie* conclusion of obviousness. (MPEP §2142.) Applicant respectfully traverses the rejections.

Claim 7 recites in pertinent part “labeling traffic to be switched in the network with a set of switching wavelengths; labeling traffic to be routed in the network with a set of routing wavelengths; optically switching the traffic labeled with switching wavelengths; and routing the traffic labeled with routing wavelengths if the traffic labeled with switching wavelengths cannot be optically switched.” Applicant’s Specification defines *switching wavelengths* as “labels to indicate that the traffic is to be switched in the optical domain using the optical circuit switching” and *routing wavelengths* as “labels to indicate that traffic is to be routed (page 7, lines 11-15). The Applicant’s Specification also defines *routed traffic* as “typically undergo[ing] an *optical to electrical conversion*, software processing, *and conversion back to the electrical domain from the optical domain*. (Page 7, lines 1-5.) As an Applicant can be his or her own lexicographer and any special meaning assigned to a term must be sufficiently clear in the Specification (and not necessarily in the claims themselves) MPEP §2111.01, Applicant respectfully submits that Ghani fails to teach at least these elements of claim 7.

Assuming for the sake of argument that the Examiner is correct, the Examiner concedes that Ghani fails to teach routing the traffic labeled with routing wavelengths if the traffic labeled with switching wavelengths cannot be optically switched. The Examiner asserts that Ghani teaches sharing resources among different routes *at p. 600, last paragraph*. The Examiner argues that it would have been obvious to route the traffic labeled with routing wavelengths if the traffic labeled with switching wavelengths cannot be optically switched to improve network spare capacity utilization in that if the resources for switching cannot switch the traffic, then the resources for routing could do so to complete the traffic transmission.

Applicant respectfully submits that the Examiner has not met the initial burden of factually supporting any *prima facie* conclusion of obviousness as required by MPEP §2142. For example, Applicant cannot find page 600, last paragraph, cited by the Examiner for

teaching sharing resources among different routes because the Ghani reference is located at pages 45-53 of the Optical Networks Magazine. There is no page 600, last paragraph, in the article. Accordingly, Applicant respectfully submits that the Examiner has not made out a *prima facie* case of obviousness with respect to Ghani and claim 7. Claims 11 and 13 properly depend from claim 7 and this applies to them as well. (M.P.E.P. §2143.03.)

Rejection of Claims 15, and 17-21 Under 35 U.S.C. §103(a)

The Examiner rejected claims 15, and 17-21 under 35 U.S.C. §103(a) as anticipated by U.S. Ghani "Lambda-Labeling: A framework for IP-Over-WDM Using MPLS (hereinafter "Ghani"). To establish a *prima facie* case of obviousness, an Examiner must show that the references teach or suggest each and every element of the claimed invention. (MPEP §2143.) Any motivation to combine reference teachings must be found in the prior art of record. For example, an Examiner may find the suggestion or motivation to combine teachings in a reference (e.g., a U.S. Patent, inherency), in common knowledge in the art (i.e., well-known art), in established scientific principles, in art-recognized equivalents, or in legal precedent (e.g., admitted prior art). However an Examiner may not use an improper rationale for combining reference teachings. (MPEP §2145.)

One such impermissible rationale is hindsight. For example, an Examiner may not use knowledge that is gleaned from the Applicant's disclosure as a roadmap for selecting and combining prior art teachings. The Examiner must point to some suggestion or motivation in the prior art to combine the teachings and must present a convincing line of reasoning as to why one would be motivated or where the reference(s) suggests that the reference teachings be combined in such a way to render the claimed invention obvious. (MPEP §2144.)

Claim 15 recites "switching logic to optically switch traffic carried on a set of switching wavelengths; routing logic coupled to the switching logic to route traffic carried on a set of routing wavelengths; and control logic coupled between the switching logic and the routing logic for receiving information carried on a set of control wavelengths to determine whether all traffic is to be directed to the switching logic or a portion of the traffic that cannot be directed to the switching logic is to be directed to the routing logic."

Claim 20 recites in pertinent part “a first hybrid node to label switched traffic with a set of switching wavelengths, to attempt to send the switched traffic to at least one secondary hybrid node via the set of switching wavelengths, to label traffic that cannot be sent to the at least one secondary hybrid node using the set of switching wavelengths with a set of routing wavelengths, to send the traffic that cannot be sent to the at least one secondary hybrid node using the set of switching wavelengths to the at least one secondary hybrid node via the set of routing wavelengths; and at least one secondary hybrid node coupled to the first hybrid node to receive the switched traffic on the set of switching wavelengths and routed traffic on the set of routing wavelengths, to route the routed traffic using an Internet Protocol (IP), asynchronous transport mode (ATM), or frame relay, and to optically circuit switch the switched traffic and the routed traffic to another secondary node.”

Applicant’s Specification defines *switching wavelengths* as “labels to indicate that the traffic is to be switched in the optical domain using the optical circuit switching” and *routing wavelengths* as “labels to indicate that traffic is to be routed (page 7, lines 11-15). Applicant’s Specification also defines *routed traffic* as “typically undergo[ing] an *optical to electrical conversion*, software processing, *and conversion back to the electrical domain from the optical domain*. (Page 7, lines 1-5.) As an Applicant can be his or her own lexicographer and any special meaning assigned to a term must be sufficiently clear in the Specification (and not necessarily in the claims themselves) MPEP §2111.01, Applicant respectfully submits that Ghani fails to teach at least these elements of claim 15 and 20.

Assuming for the sake of argument that the Examiner is correct, the Examiner concedes that Ghani fails to teach determining whether all traffic is to be directed to the switching logic or a portion of the traffic that cannot be directed to the switching logic is to be directed to the routing logic. The Examiner asserts that it is well known that circuit switched networks are high-speed, citing Applicant’s Specification, and routing networks are slow, again citing Applicant’s Specification. The Examiner then combines the cited language in Applicants Specification with Ghani argues that the combination renders claims 15 and 20 obvious. The rationale used is that one would be motivated to do so to take advantage of the

speed and integrity of circuit-switched networks before resorting to the alternative routing with its slower speed and lower integrity, as described in Applicant's Specification.

Applicant respectfully submits that the Examiner has *improperly gleaned a rationale* from Applicant's Specification. In fact, the Examiner cites specific passages from Applicant's Specification as the basis for the rationale. The Examiner has not pointed to any rationale taught or suggested in Ghani. Applicant respectfully submits that the Examiner has used *impermissible hindsight* as a rationale to render the claimed invention obvious in violation of MPEP §2144.

The Examiner also again asserts that Ghani teaches sharing resources among different routes *at p. 600, last paragraph* and argues that it would have been obvious to route the traffic labeled with routing wavelengths if the traffic labeled with switching wavelengths cannot be optically switched to improve network spare capacity utilization in that if the resources for switching cannot switch the traffic, then the resources for routing could do so to complete the traffic transmission. Applicant respectfully submits that the Examiner has not met the initial burden of factually supporting any *prima facie* conclusion of obviousness as required by MPEP §2142. For example, Applicant reiterates that Applicant cannot find page 600, last paragraph, cited by the Examiner for teaching sharing resources among different routes because the Ghani reference is located at pages 45-53 of the Optical Networks Magazine. There is no page 600, last paragraph, in the article.

Accordingly, Applicant respectfully submits that the Examiner has not made out a *prima facie* case of obviousness with respect to Ghani and claims 15 and 20. Claims 19 and 21 properly depend from claims 15 and 20, respectively, and this applies to them as well. (M.P.E.P. §2143.03.)

#### Rejection of Claims 8-10 and 12 Under 35 U.S.C. §103(a)

The Examiner rejected claims 8-10 and 12 under 35 U.S.C. § 103(a) as obvious over Ghani in view of U.S. Patent Publication No. 2001/0024305 to Nishimoto (hereinafter "Nishimoto"): Applicant respectfully traverses the rejection.

Applicant respectfully submits that claims 8-10 and 12 properly depend from claim 7 and arguments for patentability of claim 7 apply to them as well. (M.P.E.P. §2143.03.)

## CONCLUSION

Applicant respectfully submits that all grounds for rejection have been properly traversed and that the application should now be in condition for allowance. The Examiner is invited to telephone the undersigned representative if the Examiner believes that an interview might be useful for any reason.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Date:

12/30/2003

Jan Little-Washington  
Reg. No.: 41,181

## FIRST CLASS CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage in an envelope addressed to Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

on

December 30, 2003

Date of Deposit

Christina Fernandez

Name of Person Mailing Correspondence

Christina Fernandez  
Signature

December 30, 2003  
Date